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SENATE

{ REPORT
No. 1608

SEPARATION AND RETIREMENT OF JOHN R. BARKER

JUNE 17, 1960.—Ordered to be printed

Mr. JOHNSTON of South Carolina, from the Committee on Post Office and Civil Service, submitted the following

REPORT

[To accompany S. 2388]

The Committee on Post Office and Civil Service, to whom was referred the bill (S. 2388) relating to the separation and retirement of John R. Barker, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE

The purpose of this measure is to correct the record in the case of John R. Barker to show that his separation from the postal service was "involuntary not for cause" instead of "removal for cause" as is now indicated.

EXPLANATION

Mr. Barker was employed in the postal service from 1914 to 1918, as a rural carrier; from 1920 to 1922, as a substitute carrier; from 1922 to 1934, as postmaster; from 1934 to 1936, as substitute clerk. He was removed from duty on July 18, 1936, for alleged political activities. He was charged with transporting persons to the polls on election day and with being elected a delegate to a county political convention.

With respect to the first charge, the facts are that Mr. Barker did transport members of his own family to the polls and in addition five other elderly folks who were unable to walk and who had requested transportation of him. As to the second charge, Mr. Barker has stated:

I did not attend the caucus which selected the delegates and after the caucus I did not attend the convention to which elected.

The removal action in his case occurred prior to the enactment of the Hatch Political Activity Act of 1939. Both the Post Office

Department and the Civil Service Commission state that Mr. Barker's removal "for political activity" would not be warranted under that act as it stands today so certainly was not justified prior to its enactment.

Correction of the reason for his removal will carry with it entitlement to the benefits of the civil service retirement law which would otherwise be denied to him. On the basis of his verified service, enactment of this measure would accord Mr. Barker an annuity of \$54 per month commencing the first of the month in which the bill is enacted. The Civil Service Commission indicates that he may have some additional creditable service which if true would increase his annuity accordingly.

AGENCY VIEWS

Following are letters favoring enactment of this measure from the Post Office Department, Civil Service Commission, Bureau of the Budget, and Comptroller General:

OFFICE OF THE POSTMASTER GENERAL,
Washington, D.C., August 26, 1959.

HON. OLIN D. JOHNSTON,
*Chairman, Committee on Post Office and Civil Service,
U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: There has come to the attention of this Department the bill S. 2388, introduced by Senator Martin on July 15, 1959, relating to the separation and retirement of John R. Barker.

The bill provides that John R. Barker, who served as an employee of the Post Office Department from August 15, 1920, to July 19, 1936, should be considered to have been involuntarily separated from such service for reasons other than removal for cause, thus entitling him to receive the benefits of the civil service retirement and disability fund. However, such annuity benefits would not apply for any period prior to the first day of the month during which the bill becomes law.

Mr. Barker served in the post office at Indianola, Iowa, from 1914 to 1918 as a rural carrier; from April 15, 1920, to January 29, 1922, as substitute carrier; from January 29, 1922, as postmaster; and after expiration of his third term as postmaster, August 1934, to July 18, 1936, as substitute clerk. Mr. Barker was removed from duty on July 18, 1936, for alleged political activities. According to information available, the activities consisted of transporting members of his own family to the polls; transporting five other elderly folks who were unable to walk to the polls who had called and asked him to take them; and being elected a delegate to the county convention. Mr. Barker stated, with regard to the latter that: "I did not attend the caucus which selected the delegates. I will further state that I do not intend to attend the convention in the capacity of a delegate."

The removal action in Mr. Barker's case occurred prior to the enactment of the Hatch Political Activity Act, August 2, 1939 (53 Stat. 1147). Based on a reexamination of this case, it is the view of this Department that Mr. Barker's removal "for political activity" would not have been warranted under the Hatch Political Activity Act.

In view of Mr. Barker's many years of faithful and efficient postal service and due to the fact that we believe that his act was not within the intent of the law upon which denial of his annuity was predicated, enactment of S. 2388 is recommended.

The Bureau of the Budget has advised that there would be no objection to the submission of this report to the committee.

Sincerely yours,

E. O. SESSIONS,
Deputy Postmaster General.

U.S. CIVIL SERVICE COMMISSION,
Washington, D.C., August 26, 1959.

Hon. OLIN D. JOHNSTON,
Chairman, Committee on Post Office and Civil Service,
U.S. Senate.

DEAR SENATOR JOHNSTON: This refers further to your letter of July 20, 1959, requesting Commission report on S. 2388, private bill relating to the separation and retirement of John R. Barker.

The basic purpose of this bill is to legislate that Mr. Barker's July 19, 1936 separation from the postal service was involuntary not for cause, instead of removal for cause as is now shown by the official record. The bill does not follow the usual line in erroneous separation situations of correcting the record completely by restoring the individual to his former job retroactively, with or without pay, and with his rights to be adjusted accordingly under all the applicable personnel laws, including the Retirement Act. The bill would change the nature of Mr. Barker's separation and restrict the operation of that change to the effect it would have on his rights under the Civil Service Retirement Act.

In September 1936 the Post Office Department certified and forwarded to the Commission an individual retirement record for Mr. Barker showing the following facts on his employment:

1. Born November 6, 1888, and appointed April 15, 1920 to the postal service at Indianola, Iowa.
2. Continuous employment from April 15, 1920 to separation date of July 19, 1936, with retirement deductions beginning August 1, 1920 and a total of \$763.43 credited to his individual account in the retirement fund upon separation.
3. For an unspecified period up to July 31, 1934, Mr. Barker was shown to have been postmaster at Indianola; from that point on until separation he was carried on the rolls as substitute clerk, apparently performing no service while in that capacity.
4. Nature of separation: Removal for cause.

The Retirement Act of May 29, 1930, in effect in 1936 did not provide for deferred annuity in all instances of separation before meeting the age and service requirements for mandatory age or optional retirement. Deferred annuity was then available only to an employee who, after completing at least 15 years of service and attaining age 45, was involuntarily separated from the service for reasons other than removal for cause. A separated employee not entitled to immediate or deferred annuity was afforded only a refund of his retirement account with interest to separation date.

Although Mr. Barker had completed 16 years, 3 months, and 5 days of creditable service and was aged 47 when separated from the Post Office Department, he did not qualify for an annuity because his separation was by removal for cause. The only benefit due him under the law and facts was a refund of the \$763.43 in his retirement account,

plus \$240.18 in interest, or a total of \$1,003.61. This benefit has stood payable to him, at any time he might claim it, since 1936.

Mr. Barker never claimed the refund and, in fact, according to our records, never inquired about his retirement rights until March 1959, at which time Senator Thomas E. Martin transmitted to the Commission an inquiry from Mr. Barker about his rights. Our reply through the Senator outlined Mr. Barker's rights as above and furnished a refund application for his use.

This led to an inquiry into the circumstances surrounding Mr. Barker's removal. Post Office Department obtained the necessary facts from Mr. Barker's disciplinary folder and presented the matter in detail to the Commission by letter of April 28, 1959, which read in pertinent part as follows:

"Mr. Barker served as rural carrier from 1914 to 1918. On April 15, 1920, he was appointed substitute city carrier and continued in this capacity until January 29, 1922, when he was made postmaster.

"Incident to the expiration of his third term as postmaster he was reassigned to the position of substitute clerk on August 1, 1934.

"In April 1936, a complaint of alleged political activity was lodged against Mr. Barker. As a result of an investigation by a postal inspector the following letter was addressed to Mr. Barker on June 18, 1936:

"It has been brought to the attention of the Department that you have been politically active and, according to your own statement made today, you state that during the first part of this month you hauled some eight voters to the polls; also that on April 24 of this year you were elected a delegate to the Republican county convention to be held at Indianola, June 27, 1936.

"It is shown in the pamphlet, form 1236, furnished by the U.S. Civil Service Commission, under paragraphs 6 and 12 on pages 6 and 7, that practices of this nature are in violation of the rules set out by the Commission.

"In view of this it is respectfully requested that you reply to this letter within 3 days from receipt, showing cause why you should not be removed from the service or otherwise disciplined. Your letter will be transmitted to the Department with the report of the investigation and will be given careful consideration."

"Mr. Barker's reply was as follows:

"I have your communication of the 18th instant and beg to make the following reply.

"In regard to the eight voters which I hauled to the polls the first part of the month I have to advise that three of them were members of my own family and the other five were elderly folks who were unable to walk to the polls and called and asked me to take them.

"As to being selected as a delegate to the county convention, I did not attend the caucus which selected the delegates. I will further state that I do not intend to attend the convention in the capacity of a delegate."

"No further investigation was made and Mr. Barker's removal was directed by the Department effective July 18, 1936.

"At the time this case was processed the Hatch Act had not been enacted. Further, at that time it was customary for the Department to request the Commission to make a recommendation before the Department made a decision in political activity cases. The Com-

mission was not called upon to comment in this case. It is only reasonable to assume that had the facts been presented to the Commission, the recommendation would not have been for removal.

"The charges in this case would not support removal today and it is believed that a review of the facts as they existed and as stated herein can and should result in a ruling that while Mr. Barker's separation was involuntary it was not for cause within the intent of the law upon which denial of annuity was predicated.

"Accordingly, it is requested that the claim for annuity be reviewed in the light of the facts which do not seem to support the action which was taken."

After the most careful consideration, the Commission was obliged to reply to the Department in substance as follows:

1. That for purposes of adjudicating the retirement rights of Mr. Barker the Commission was without authority to change the fact that his separation had been accomplished by the Post Office Department by removal on charges.

2. That while the Department could have asked for Commission comment in the case before acting on the political activity charges, the fact is that it did not do so. Instead, the Department acted within the scope of its authority and effected the removal independently. Not having been asked to recommend at the time, the Commission would have no basis on which to comment on the suggestion that it might not have recommended for removal in the case.

3. That the question of whether removal would have been warranted had the case arisen later under the Hatch Act was not material. A conclusion that Hatch Act standards would not require removal would not alter the fact of the Department's prior removal of Mr. Barker on charges.

Our position in this regard, of course, remains the same. We know of no way, short of private legislation, that the Government could alter the nature of Mr. Barker's separation, regardless of the merits.

Accordingly, should Congress after considering the facts in this matter, determine that there was not sufficient basis for Mr. Barker's removal on charges, this Commission would not object to the enactment of S. 2388.

On the basis of his verified service, enactment of this bill would entitle Mr. Barker to a lifetime annuity of \$54 per month commencing the first of the month in which the bill is enacted. There are two indications of possible added service: (1) Mr. Barker claims prior military service, and (2) the 1959 correspondence from Post Office Department mentions prior rural carrier service. Both of these additional service allegations would have to be developed in the event of annuity entitlement and the rate cited herein would be increased by reason of any additional creditable service found.

The Bureau of the Budget advises there would be no objection to the submission of this report to your committee.

By direction of the Commission:

Sincerely yours,

ROGER W. JONES, *Chairman.*

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., September 3, 1959.

HON. OLIN D. JOHNSTON,
*Chairman, Committee on Post Office and Civil Service,
U.S. Senate, Washington, D.C.*

MY DEAR MR. CHAIRMAN: This is in reply to your request of July 20, 1959, for the Bureau's views on S. 2388, a bill relating to the separation and retirement of John R. Barker.

The Bureau of the Budget would interpose no objection to approval of this bill.

Sincerely yours,

PHILLIP S. HUGHES,
Assistant Director for Legislative Reference.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, August 7, 1959.

HON. OLIN D. JOHNSTON,
*Chairman, Committee on Post Office and Civil Service,
U.S. Senate.*

DEAR MR. CHAIRMAN: Your letter of July 20, 1959, requests our views on S. 2388.

The bill would have the effect of removing any impediment to the awarding of a retirement annuity to John R. Barker who served as an employee of the Post Office Department from August 15, 1920, to July 19, 1936.

While we have no information of record in our Office concerning this matter, we informally have ascertained that Mr. Barker was separated for cause from his position in the Post Office Department in 1936; that under the provisions of the Retirement Act then in effect the separation for cause precluded any award or future award of an annuity, the employee being entitled only to a refund of the retirement deductions made from his salary; and that he has never requested a refund of said deductions.

We understand that the cause of the separation was political activity, namely the transportation of certain persons to the polls to vote—who Mr. Barker stated were his relatives—and his election as a delegate to a county political convention.

If the facts obtained by us are substantially correct, it is doubtful whether similar actions on the part of an employee under current statutes and regulations would call for removal from the service. Also, it is possible that if the employee had appealed to higher authority at the time he might have obtained a less harsh penalty.

On the basis of the facts available to our Office we are unable to definitely recommend either for or against enactment of the proposed legislation. However, it would seem on the basis of such information as we have been able to obtain that some form of relief is warranted in the matter.

We assume a complete report of the facts and circumstances in Mr. Barker's case will be obtained from the Civil Service Commission and the Post Office Department.

Sincerely yours,

JOSEPH CAMPBELL,
Comptroller General of the United States.

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JOSEPH G. WYNN,
Special Agent in Charge of the United States